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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,509	03/11/2005	Matthias Marke	112740-1049	1320
29177 7590 07/09/2008 BELL, BOYD & LLOYD, LLP P.O. BOX 1135 CHICAGO, IL 60690				
EXAMINER TORRES, JOSEPH D				
ART UNIT 2112		PAPER NUMBER		
NOTIFICATION DATE 07/09/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary

Application No.

10/523,509

Applicant(s)

MARKE ET AL.

Examiner

Joseph D. Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20 and 23-38 is/are pending in the application.
- 4a) Of the above claim(s) 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20 and 23-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 20- 35, in the reply filed on 10/10/2007 is acknowledged.

Claims 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/10/2007.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: '5'. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 26, 33 and 34 are objected to because claims 26 and 33 depend from canceled claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 23-27, 31, 32 and 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Haimi-Cohen; R. (US 6606722 B1).

35 U.S.C. 102(b) rejection of claim 20.

Haimi-Cohen teaches sending a text/voice indicator from a cellular text telephone modem to a voice decoder of a communication terminal receiver (col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen provide reversed CRC to indicate Baudot-encoded text telephony signals for communication between a cellular phone sending and receiving terminals; Figure 3 is a voice decoder of a communication terminal receiver), and suppressing an error concealment in the voice decoder if the text/voice indicator indicates that the data is cellular text telephone modem text data (col. 6, lines 9-15 in Haimi-Cohen teaches that Prior Art speech decoders do not distinguish Baudot-

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encoded text telephony signals from speech signals; col. 6, lines 15-55 in Haimi-Cohen teaches that the Speech Decoder of Figure 3 distinguishes from the Prior Art in the use Baudot-encoded text reversed CRC indicator allowing for the suppression of error concealment in the voice decoder by providing a bypass mechanism for Baudot-encoded text).

35 U.S.C. 102(b) rejection of claim 23.

Figure 1 teaches that CRC error correction code is modified by reversing.

35 U.S.C. 102(b) rejection of claim 24.

Col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen.

35 U.S.C. 102(b) rejection of claim 25.

Col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen.

35 U.S.C. 102(b) rejection of claim 26.

Figures 1 and 3 in Haimi-Cohen teach that if a subsequent received frame is a voice frame CRC is used as an indicator for voice.

35 U.S.C. 102(b) rejection of claim 27.

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Figure 1 in Haimi-Cohen provides an adaptive data rate for TTY text transmission embedded in voice transmissions, the data rate determined by the amount of TTY embedded in a block of length B of speech.

35 U.S.C. 102(b) rejection of claim 31 and 32.

Positions in the data frame for CRC error correction redundancy are unused TTY text positions.

35 U.S.C. 102(e)/103(a) rejection of claim 35.

Abstract in Haimi-Cohen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 28-30, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haimi-Cohen; R. (US 6606722 B1) in view of Kobayashi; Hisashi et al. (US 6029264 A, hereafter referred to as Kobayashi).

35 U.S.C. 103(a) rejection of claims 28 and 29.

Haimi-Cohen substantially teaches the claimed invention described in claim 20 (as rejected above).

However Haimi-Cohen do not explicitly teach the specific use of additional information is added by the communication terminal receiver to the received data.

Kobayashi, in an analogous art, teaches additional information is added by the communication terminal receiver to the received data (Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Haimi-Cohen with the teachings of Kobayashi by including additional information is added by the communication terminal receiver to the received data. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that additional information is added by the communication terminal receiver to the received data would have provided Improved error correction performance (col. 4, lines 22-25 in Kobayashi).

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35 U.S.C. 103(a) rejection of claim 30.

Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders. Erasures indicate that the frame having an erasure is corrupted.

35 U.S.C. 103(a) rejection of claim 33 and 34.

Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders. Erasures are an indication of noise in the communication channel.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 20-35 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14-24 of copending Application No. 10/523326. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 20-35 are provisionally rejected on the ground of nonstatutory double patenting over claims 14-24 of copending Application No. 10/523326. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: claims 20-35 are a broader version of claims 14-24 of copending Application No. 10/523326; hence are embed in 14-24 of copending Application No. 10/523326.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner
Art Unit 2112

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